

CITY OF LOS ANGELES
CALIFORNIA



CITY ETHICS COMMISSION

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**REGULAR MEETING OF THE
LOS ANGELES CITY ETHICS COMMISSION**

**Tuesday, August 10, 2010
9:30 a.m.**

APPROVED

**City Hall, Room 1050 – 10th Floor
200 North Spring Street
Los Angeles, CA 90012**

1. Call to Order.

Nedra Jenkins called the meeting to order at 9:45 a.m. (President Zukin later joined the meeting underway at 10:29 a.m.).

Present: Canter, Jenkins, Vanaman, and Zukin.

2. Public Comment

There was no public comment.

3. Approval of draft minutes for the meeting of July 13, 2010.

Valerie Vanaman moved to approve the draft minutes for July 13, 2010, and Marlene Canter seconded. The minutes were approved 3-0.

4. Consideration of and action on statements of economic interests for commission and department head SEI reviews [*Shannon Prior*].

Program Analyst Shannon Prior recommended that the Commission approve cautionary letters for Mr. Victor H. Cuevas, Mr. Dean Hansell, Ms. Rayman Mathoda, Mr. Keith Rohman, Mr. Todd Sargent, and Mr. Alex Cha and standard letters for Ms. Brenda Barnette, Ms. Lucelia K. Hooper, Ms. Jehan F. Agrama, Ms. Evelina Fernandez, Mr. Murtaza Sanwari, Mr. Jefferey Daar, Mr. Ramon Muniz, Ms. Maria Townsend, and Ms. Christina Noonan.

Canter asked where the standard and cautionary letters are sent, and Prior stated that the letters are transmitted to the Council via the City Clerk and that the nominees are copied on that transmittal, as well. Canter asked which committee reviews the letters, and Prior stated

that it depends on which board the nominee is being considered for. Canter asked who monitors the cautionary letters and recusal process. Prior stated that each board is assigned a representative from the City Attorney's Office to advise on these types of issues, and the Commission receives a copy of all recusal forms filed. Deputy City Attorney Renee Stadel noted that, due to budget cuts, there is no longer a representative for each board; however, the City Attorney gives advice when needed. Canter asked if Stadel reviews the Commissioner's cautionary letters for potential conflicts of interests, and Stadel stated that she does to a certain extent but that each public official is responsible for his own review for possible conflicts of interests. Canter said the public should be educated on this process so that they can keep public officials accountable.

Vanaman moved to accept the recommendations, and Canter seconded. The letters were approved 3-0.

5. Executive Director's report [*LeeAnn Pelham*].

Executive Director LeeAnn Pelham presented the report and noted that the most recently completed public audit reports were attached to her written report, as well as a brief update on the conflict of interests code review. She gave a verbal update from the Personnel Department regarding the search for the Executive Director position and said that there are 15 applicants so far.

6. Monthly policy and legislation report [*Heather Holt*].

Director of Policy and Legislation Heather Holt presented this item and highlighted that the Rules & Election Committee held a hearing on the staff's recommendations regarding the Municipal Lobbying Ordinance (MLO). She noted that the Committee will not take up the discussion of the MLO until late fall at the earliest because of other time-sensitive matters related to the March 2011 ballot. Vanaman asked about the Ethics Commission's involvement in the Krekorian motion regarding campaign finance reform measures for independent expenditure committees in the wake of *Citizens United*. Holt said that the motion was referred to the Rules & Elections Committee, which referred it to the Ethics Commission on July 28, 2010. She noted that the Commission will be able to make recommendation to the City Council on the motion. Jenkins asked if the Commission or the City Attorney's office will draft the ordinance, and Stadel stated that the City Attorney's office drafts ordinances, but the Commission makes policy recommendations. Vanaman asked where this type of project shows up in the Commission's workload flow chart. Holt noted that it is on the horizon snapshot as an item to be taken up in November. Vanaman asked if this project has a deadline, and Holt said that it does not. She explained that the Rules & Elections Committee is occupied with ballot measure items and would not consider this item until at least November.

7. Quarterly activity report by program operations division [*David Tristan*].

Deputy Director David Tristan was unable to be at the meeting, and Project Manager Mark Low and Senior Program Analyst Jennifer Bravo presented the report in his absence.

Vanaman asked what is included in the \$99,000 in contributions raised on behalf of City officeholders and candidates that was reported by lobbying entities during the second quarter of 2010. Low said that City Charter § 470 prohibits contributions made directly by lobbying firms and lobbyists to City officeholders and candidates, but they are not prohibited from raising funds on their behalf and, if they do so, must report that activity pursuant. He explained that \$99,000 is the amount that was disclosed by those lobbying entities. Vanaman asked what lobbying firms and lobbyists are required to disclose, and Low explained that they are required to disclose fundraising solicitations and fundraising activity, including the date of a fundraiser, solicitation of funds, the benefiting candidate or officeholder, and the total amount raised as a result of that activity.

Canter and Jenkins thanked the staff for including sample questions reflecting the kinds of informal advice that the staff provides to the public.

Vanaman asked if salaries are included in the \$333,000 disclosed for expenditures made in connection with attempts to influence City decisions. Low said that salaries are disclosed separately; that number reflects the amount of money spent by lobbyists in connection with items they are attempting to influence. Vanaman asked where a lobbyist's salary is reported, and Low replied that a person's full salary does not need to be disclosed, unless lobbying is that person's only activity. For example, many lobbyists are also attorneys, and lobbying is only part of their responsibilities. Vanaman asked if she could find out how much a particular lobbying firm spent on lobbying a particular department in a year, and Low said that specific information is not reported. Vanaman asked what information is reported with regard to salaries. Low explained that lobbying firms disclose compensation they pay to registered lobbyists and non-lobbyists who also participate in attempts to influence City decisions. Jenkins, Canter, and Vanaman indicated their interest in having the staff walk the commissioners through the lobbying disclosures at the next meeting. Low indicated that staff, with a little bit of preparation, would be happy to do so.

8. Quarterly activity report by enforcement division [*Deena Ghaly*]

Director of Enforcement and Deputy Executive Director Deena Ghaly presented the report and highlighted that there has been a slight reduction in whistleblower complaints and a small increase in the backlog. She noted that there were fewer open investigations over the past quarter. She also noted that the enforcement division lost one of their staff members, Terra Messina, who moved to the operations division. Ghaly said that the commissioners received a copy of a letter that was sent by staff to the Office of Administrative Hearings regarding the transparency of their billing practices. Jenkins asked if the staff received a response, and Ghaly said that it had not.

9. Consideration of and possible action on proposed stipulated settlement:

In the Matter of Jack Weiss, CEC Case No. 2010-14 (alleged campaign finance reporting violation pertaining to the 2009 City elections) [Deena Ghaly & Dominic Berbeo].

Respondent's counsel, Ron Turovsky, was present. Ghaly presented the item, explaining that the matter was previously before the Commission in July and that it involves one count of violating a campaign reporting provision in Los Angeles Municipal Code § 49.7.15. Ghaly explained that the provision requires non-matching-funds candidates to notify the Commission when their committees spend more than 100 percent of the expenditure limit that applies to matching-funds candidates. Mr. Weiss was a non-matching-funds candidate and failed to provide the proper notice. Ghaly said that staff presented a proposed stipulated settlement for \$3,750, which the Commission rejected. The new proposed stipulated settlement is \$10,000 and takes into consideration the Commission's feedback and concerns regarding this case.

Canter thanked the staff for taking into consideration the seriousness of the previous conversation regarding this case. However, she expressed concern that the respondent may be unfairly punished, because the Commission was discussing the fine structure globally, and not in relation to a specific case. Jenkins said that the Commission's previous conversation on this matter was very specific to this violation and the respondent's history with the Commission raised the issue of deterrence. She said she believed that \$10,000 provides proper deterrence. Vanaman stated that she did not recall the previous conversation the same way Canter did and that she did not share Canter's concerns regarding the proposed fine. Vanaman agreed with Jenkins that it takes into account the respondent's previous enforcement history and the facts of the case and that it provides a proper deterrence against such behavior in the future. Canter said she was not ready to approve a \$10,000 penalty, because she did not want to make a decision that does not take into account the Commission's history in dealing with cases like this.

Ghaly said that this case is not inconsistent with the way the Commission has treated other cases like this one. She said the staff took into account the fine structure, the overall methodology used in other enforcement cases, the harm to the system, and the enforcement history of the respondent and the professional treasurer. Ghaly explained that there is a range within which appropriate penalties may fall. The last proposed penalty was on the low end of the range and the new proposed penalty is on the high end.

Turovsky said that his respondent is accepting responsibility for this violation. An inadvertent mistake was made, and he is willing to accept the fine. However, he said that he believes the penalty amount is too high, given the precedent for these violations.

Vanaman moved to approve the stipulated settlement, and Canter seconded. Vanaman stated that the issue Canter raised regarding the fine structure and penalty amounts is best done under a different agenda item. Canter suggested that the settlement amount be lowered to \$7,500, and Jenkins and Vanaman opposed that. The motion was approved, 3-0.

10. Consideration of and possible action on selection of hearing procedure:

In the Matter of Laurel Dickranian, CEC Case No. 2009-33 (alleged campaign finance disclaimer and reporting violations pertaining to the 2009 City elections [Deena Ghaly & Dominic Berbeo].

Ghaly presented the report and said that the issue is the selection of a hearing procedure for a case involving three alleged campaign finance disclaimer violations. The alleged violations involve the failure to provide 24-hour notice, failure to provide a copy of the communication, and failure to include proper disclaimer language in the communication.

Jenkins asked if the Commission's evidence at the hearing would only be documentary, and Ghaly said that some testimony will be needed. Vanaman asked if the case is before the Commission because attempts to settle failed. Ghaly replied that settlement negotiations are always opened at the same time that a case is opened. Vanaman asked if the respondent has representation, and Ghaly noted that she does. Vanaman asked staff to estimate the number of hours that this case would take in a hearing, and Ghaly stated that the case could take quite a while—perhaps one day for the Commission's side alone. Vanaman asked when the Commission last heard a case rather than moving it to an outside hearing officer, and Ghaly replied that it was in 2002. Pelham noted that the hearing lasted for three days, even though it had initially appeared to be a straightforward case.

Helen Zukin joined the meeting at 10:29 a.m.

Canter moved to send the item to the Office of Administrative Hearings, and Vanaman seconded. The motion carried, 4-0.

11. Consideration of and possible action on draft RFP for potential administrative enforcement hearing officers [*Deena Ghaly*].

Ghaly presented the item, highlighting that the staff revised the draft request for proposals (RFP) for the Commission's consideration.

Canter moved to approve the RFP, and Jenkins seconded.

Vanaman asked how much staff time the RFP process would take. Pelham explained the steps that would be required: the RFP would have to be advertised, a scoring mechanism for bidders would have to be developed, a bidder meeting would be conducted, staff would score and review the bids, and recommendations would be made to the commissioners. Vanaman asked how the staff feels about a RFP. Pelham said that she thinks it is a question of trade-offs and noted that it would take time away from the enforcement staff's other duties.

Zukin stated that her concern is whether this would be a good use of staff hours given the recent reductions in staff resources. Canter asked if the RFP should be postponed until the new executive director is found. Jenkins stated that the Commission could go forward with the RFP and wait for input from the new executive director. Canter moved to put out the RFP, and Jenkins seconded. The motion carried, 3-1, with Commissioner Vanaman voting "no."

12. Consideration of and possible action on staff report on City Ethics Commission enforcement fines approach and guidelines [*Deena Ghaly*].

Ghaly presented this item, which had been requested by the commissioners. She explained that the staff considers many different factors when approaching fines. They refer to City Charter § 706, which outlines the Commission's authority regarding violations: the Commission can issue a cease-and-desist order, it can order that any outstanding documentation, records, or filings be completed, and it can issue a fine of \$5,000 or three times the amount that was unlawfully expended, contributed, given, or received. Ghaly said the staff also looks to the legislative history, the Commission's mission, and the constitutional precepts of excessive fines and double jeopardy. Under the California Constitution, staff must also consider the respondent's ability to pay any proposed fine. Ghaly explained that the Commission's laws impose strict liability, which tells the staff to vindicate public rights when anyone violates the regulations. Zukin asked what Ghaly meant by strict liability, and Ghaly explained that City Charter § 706(b) says that any person who violates any provision of the laws relating to campaign financing, lobbying, conflicts of interests, or governmental ethics—or causes another person to do so—is liable. There is no intent requirement.

Canter asked Ghaly to explain how the staff assesses a respondent's ability to pay. Ghaly said that staff considers financial hardships raised by the respondent. For example, there is a case in which the Commission permitted a respondent to pay a penalty in installments. Ghaly said that most of the Commission's laws are hybrid statutes—meaning they can be pursued both criminally and civilly, and nothing prevents joint investigations and joint prosecutions. Usually, joint investigations are reserved for the most egregious cases. Vanaman asked what "dollar for dollar" means. Ghaly explained that is when the penalty imposed is the same as the amount that was improperly reported, given, or received. The staff uses this method, because it expands and contracts with the extent of the violation.

Ghaly said that the attachments to the report include the history of fines issued by the Commission, as well as potential fines for violating the campaign finance laws. Canter asked about the blank entries in the attachment that details the history of the fines, and Senior Investigator Kelli Shope explained that those violations have never been before the Commission for a decision.

Vanaman asked why the fine for a non-candidate-controlled committee's failure to file a mailer is less than the fine for candidate-controlled committees. Ghaly stated that the Commission reduced the fine for candidate controlled committees only, because of the determination that independent expenditure committees were becoming more prevalent in Los Angeles and that there is a need to know about them. Jenkins said that technological advances in providing notice online may make the reduction obsolete.

Jenkins moved to increase the per-count fine structure from \$150 to \$500 for candidate-controlled committees that fail to provide a copy of the campaign mailing/literature to the Commission in a timely manner, Vanaman seconded. Stephen Kaufman provided public comment and stated that the \$150 amount resulted from an administrative law judge recommending that penalty amount to the Commission. He also noted that the fine structure that is in place has been fairly consistent since 2002. The motion passed, 4-0.

Jenkins moved to increase the per-count fine of \$150 dollars for candidate-controlled committees to \$500 for the failure to send copies of scripts or recordings of campaign calls or broadcasts or advertisements within 24 hours of their being broadcast, and Canter seconded. The motion passed 4-0.

The Commission took a break at 11:09 a.m., and resumed the meeting at 11:14 a.m.

13. Consideration of and possible action on recommendations regarding the Governmental Ethics Ordinance's provisions on gifts and misuse of position *[Heather Holt]*

Holt explained that the item was a continuation of a discussion begun at the July meeting. The recommendations regarding the Governmental Ethics Ordinance (GEO) provisions regarding gifts remained the same as those made in July. Holt noted that more visual representations of the recommendations were included in the report, in response to a Commission request.

Vanaman moved to adopt the staff's recommendation to use the state's definition of gifts and travel expenses, Jenkins seconded. The motion carried 4-0.

Holt said that the next recommendation was to ban gifts from all restricted sources, so that they are treated consistently. Jenkins said she was not in favor of that, because it was inconsistent with the state's gift limit and would reduce the number of public officials who interact with the public at fundraisers or events. She explained that she would be comfortable keeping the threshold where it is now but would be more comfortable with increasing it in order to be consistent with the state's threshold. Canter stated that she thinks disclosure is important when considering this issue. Zukin said that the rules should be reasonable and should remain consistent with the state's regulations. Vanaman said that an issue with the current City limits is that there are two categories—one for lobbyists and lobbying firms, and one for every other restricted source. She noted that the staff proposal was to set the threshold for any restricted source at zero, except for routine and nominal office courtesies. Canter said that she would rather have the \$100 limit than have an exception for nominal office courtesies.

Pelham explained that, historically, the City has taken the view that there is a public interest in imposing greater gift restrictions than the state has. Jenkins noted that Los Angeles County does not have a more restrictive threshold than the state. Canter said that she thinks City officials should be prohibited from accepting gifts from any type of restricted source.

Holt explained that Los Angeles County limits gifts from lobbyists and lobbying firms. Jenkins said that she thinks of lobbyists and lobbying firms as a separate category of restricted sources. She said that, whether the threshold is \$100 or \$420, City officials should maintain integrity when accepting gifts from anyone. Holt pointed out that the City has a responsibility to protect against both actual corruption and perceived corruption. She explained that the GEO prohibits gifts given to a City official in an attempt to influence that

official in a City action. That is protection against actual corruption. The dollar limits on gifts are designed to guard against the public's perception of corruption, regardless of the intent behind a gift.

Zukin asked when the \$100 limit was put into place, and Holt replied that the provision was part of the original GEO in 1991. Zukin said that any provision must be reasonable and take into account the ease of compliance and consistency. Stadel noted that if the Commission applied a \$420 limit to non-lobbyist restricted sources, the GEO would not contain a limit, because it would defer to state law. Canter said that if the Commission moved in that direction, she would vote no. She urged her colleagues to consider how the public would perceive what they were suggesting. Zukin said that she feels very strongly that the Commission takes its mandate seriously and will not be lessening any of the Commission's regulations if they make it consistent with the state's regulations.

Holt noted that the discrepancy between the gift ban for lobbyists and the \$100 limit for other restricted sources creates a loophole in which a lobbyist's client can give a gift when the lobbyist cannot. Vanaman asked if there was another reason for recommending a ban, other than closing the loophole. Holt replied that the other components are the equity issue of treating all restricted sources the same and the Commission's mandate to protect the public's perception of government. She said the ban on gifts from lobbyists was approved by the voters, and it was the staff's assessment that they approved it because they felt like a gift from someone trying to influence a City decision is something that corrodes confidence in governmental processes. Holt said that gifts from non-lobbyist restricted sources, who also have business with the City and are hoping for a particular result in a City decision, can be just as detrimental to the public's confidence.

Zukin asked what other jurisdictions do regarding gifts. Holt said that not all other cities in California create different thresholds than the state. Those that do vary in how restrictive they are and who the limits apply to. Other jurisdictions have some sort of ban against gifts. For example, Long Beach bans gifts from lobbyists, Orange County bans gifts from its restricted sources, San Diego bans gifts of travel from restricted sources, and San Francisco bans gifts from restricted sources. Holt stated that a few cities outside of California also impose bans. For example, Atlanta bans gifts from restricted sources, Jacksonville bans gifts from restricted sources, Seattle bans gifts from restricted sources, and New York bans gifts from lobbyists and their spouses, registered domestic partners, and children. Holt noted that there are also other types of gift limits in other jurisdictions. San Jose and Chicago both limit gifts from their restricted sources to \$50 per gift (Chicago has an annual limit of \$100), and Austin limits gifts from lobbyists and their clients to \$100 per year.

Vanaman asked if there is any written research on this topic to provide more insight on the political theory and thought behind gift laws. Holt said that she has not found any but would be happy to continue to research that for the Commissioners.

Canter suggested continuing the matter to next month. Zukin agreed but suggested that the item be addressed at the start of the next meeting. Canter stated that she would like the information about laws in other jurisdictions in writing. Zukin moved to continue the discussion of the gift limits to the beginning of next month's agenda. Jenkins expressed her

concern that delaying this item may move other items further behind on the timeline. Vanaman argued that all of the work has been done, and that it would just require some research from the staff. However, she doesn't want to see other things bumped either. Holt asked if the Commission has reached a consensus regarding philanthropic solicitations, a non-gift recommendation carried over from a discussion regarding the misuse of City positions. Canter and Zukin said they would feel more comfortable putting it off until the next meeting. Jenkins requested that all information from the staff be provided in writing rather than verbally. Jenkins also asked to have the minutes related to the philanthropic discussion from the July meeting be attached to next month's discussion.

14. Announcements and requests to schedule items on future agendas.

There were no announcements or requests to schedule items on future agendas.

15. Adjournment.

Jenkins moved to adjourn the meeting, and Canter seconded. The meeting was adjourned at 12:01 p.m., by a vote of 4-0.